IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.10.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.1206 of 2002

1.Salem Vivekananda English
Institute
Central Commercial Complex
Omnallur Main Road
Opposite to GH
Salem-1.

2.Mrs.S.Ramajanardhani

3.Thambi V.Sivaramasubramaniam

.. Petitioners/Defendants 1 to 3

vs.

1.Vivekananda Kalvi Nilayam Pvt.
Ltd.
9, Madley Road, T.Nagar
Chennai.600 017, rep. by
Mr.V.Rajagopalan.

2.S.Varadarajan

.. Respondents/Plaintiff & 4th Respondent

Revision Petition under section 115 of CPC filed against the order dated 20.4.2000, in I.A.No.3502/1999 in O.S.No.1228/1999 on the file of the III Asst. Judge, City Civil Court, Chennai as confirmed in C.M.A.No.120/2000 dated 22.2.2001 on the file of City Civil Court (VI Addl. Judge) Chennai.

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For Petitioners : Mr.A.Sivaji
For Respondents : Mr.Mr.S.Kuberan, for
M/s.Rank Associates.

ORDER:

This Revision Petition has been filed against the order dated 20.4.2000, in I.A.No.3502/1999 in O.S.No.1228/1999 on the file of the III Asst. Judge, City Civil Court, Chennai as confirmed in

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C.M.A.No.120/2000 dated 22.2.2001 on the file of City Civil Court (VI Addl. Judge) Chennai.

2. Defendants 1 to 3 in O.S.No.1228/1999 are the revision petitioners before this court.

3. The 1st respondent/plaintiff filed O.S.No.1228/1999 on the file of the III Asst. City Civil Court, Chennai for the following reliefs:

> "(a) for the sum of Rs.84,079/- together with further interest at the rate of 24% per annum.
> (b) for damages of Rs.25,000/- or at such further amount as this Hon'ble Court may be pleased to grant.
> (c) directing them to return the materials to the plaintiff, viz.:
> a) Functional feed back for the fortnight ended 30.9.98
> b) unused receipt book
> c) photoblocks
> d) rubber stamps
> e) unused prospectus
> f) enquiry register
> g) unused letter pads
> and any other materials of the plaint of which the defendants may have in their possessions."

4. Along with the suit, the 1st respondent/plaintiff filed I.A.No.3502/1999 for an interim injunction and the trial court by order dated 20.4.2000 allowed the I.A. restraining the defendants in the suit from carrying on the business in the name and style of Salem Vivekananda English Institute till the disposal of the suit. Against the order of the trial court dated 20.4.2000, an appeal was filed in C.M.A.No.120/2000 and the appellate court by order dated 22.2.2001 dismissed the appeal and thereby confirmed the order of the trial court. Aggrieved by the order of the appellate court dated 22.2.2001 confirming the order of the trial court, the above Civil Revision Petition has been filed by defendants 1 to 3 in the suit.

5. Heard the learned counsel appearing on either side and I have also gone through the documents filed in support of their submissions.

6. It is the case of the 1st respondent/plaintiff that their institute is a recognised one all over India for conducting classes in spoken English and learning English etc. In April 1996 revision petitioners 2 and 3 and 2nd respondent were permitted to act as their franchise and on 28.9.1998 they wanted to withdraw from the 1st respondent/plaintiff franchise and the same was accepted by the 1st respondent/plaintiff. The 1st respondent/plaintiff insisted on the revision petitioners to

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return the materials supplied by them but without doing so, they started the institute under the name and style of Salem Vivekananda English Institute which is deceptively similar to that of the plaintiff's institute and the materials supplied by 1st respondent/plaintiff are also being used by them. Therefore they sought for an interim injunction till the disposal of the suit.

7. The trial court after going through the entire documents have held that as the names are deceptively similar and the advertisement issued by the revision petitioners are also similar to that of the advertisement of the 1st respondent/plaintiff, a confusion has been created among the public about the two institutes and granted an order of injunction after considering the very fact that only after surrendering the franchise rights to 1st respondent/plaintiff, the revision petitioners have established the new institute. The appellate court also re-appreciated the entire evidence and held that if the revision petitioners are allowed to conduct their business in the present name, it would definitely create a confusion in the minds of the public which would in turn result in loss and damage being caused to the 1st respondent/plaintiff. Against these concurrent findings of both the courts below, the above Civil Revision Petition has been filed.

8. An appeal filed against an order passed by the trial court under Order 39 Rule 1 and 2 C.P.C. is not like regular appeal. When an injunction application is filed under Order 39 Rule 1 and 2 CPC, the trial court is expected to exercise the discretion in the facts and circumstances of the case. If this discretion is properly exercised by the trial court, the same cannot be disturbed by the appellate court or the revisional court.

9. In the present case, the trial court has elaborately evaluated the evidence to come to a conclusion that 1st respondent/plaintiff has made out a prima facie case and the balance of convenience is also in their favour. The trial court has pointed out that as both the names are deceptively similar, it would certainly create some doubts in the minds of the public which will cause loss and damage to the 1st respondent/plaintiff.

10. The appellate court has re-evaluated the entire evidence and come to the very same conclusion that if an order of injunction is not granted, irreparable loss would be caused to the 1st respondent/plaintiff.

11. When both the courts below on the strength of evidence, exercised their discretion, that 1st respondent/plaintiff is entitled to an order of injunction, the same cannot be easily set aside unless the discretion exercised is illegal or perverse and not based on sound legal principles.

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12. By going through the order of the appellate court confirming the order of the trial court, I do not find any illegality or perversity warranting interference. In fact, the appellate court has kept in mind that the revision petitioners have initially asked for a franchise and after operating as 1st respondent/plaintiff's franchise for sometime, they surrendered the franchise and started the new institute. The appellate court adverted to the fact that the names are similar and the advertisement given by the revision petitioners is also similar. Only after satisfying that it would create some confusion and doubt in the minds of the people about these institutes which would result in loss and damages to the 1st respondent/plaintiff, it confirmed the order of the trial court.

13. Therefore there are no merits in the revision petition and consequently the C.R.P. is dismissed. No costs. C.M.P.Nos.12946/2002 and 8124/2005 are also dismissed.

30.10.2006

ORDER: This petition having been posted on Wednesday the 22nd day of November 2006 for orders in the presence of the abovesaid Advocates, the Court made the following order:-

At the time of pronouncing the orders, the learned counsel for the petitioners submitted that in February 2005 itself the 1st respondent has stopped using the name 'Vivekananda Kalvi Nilayam' and it was changed to VETA and in view of this, the 1st respondent has lost interest in its original name and therefore the suit in O.S.No.133/2003 on the file of the Principal District Judge, Salem itself is to be dismissed.

2. The learned counsel for the 1st respondent admitted that the name has been changed as stated by the learned counsel for the petitioner. But added that it does not mean that the suit is to be dismissed, as it has been filed for other reliefs also.

3. In this revision petition the order of the trial court dated 20.4.2000 as confirmed by the appellate court dated 22.2.2001 was tested to find out whether the trial court has rightly exercised its discretion in granting the order of injunction in favour of the 1st respondent/plaintiff and only in that context I held that the trial court has rightly exercised its jurisdiction in granting injunction in favour of the 1st respondent/plaintiff.

4. Now the 1st respondent/plaintiff themselves have changed the name which was also accepted by the learned counsel for the 1st respondent/plaintiff and therefore there is no order necessary to be

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passed in the above Civil Revision Petition and accordingly the same is closed as no orders are necessary.

sks

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar,
City Civil Court,
Madras (with records)

2. The Record Keeper,
VR Section,
High Court, Madras.

1 CC TO M/S RANK ASSOCIATES, ADVOCATE SR 51261

Pre-delivery order,
C.R.P.(NPD)1206/02.

22.11.2006

AKM(CO)
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